

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

**Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

www.montgomerycountymd.gov/content/council/zah/index.asp

**IN THE MATTER OF: OTTO TROXLER &
GABRIELA FERREYRA for a conditional use
for an attached accessory apartment on
Property located at 9605 Rockville Pike,
Bethesda, Maryland**

OZAH Case No. CU 15-01

Otto Troxler *
Gabriela Ferreyra *
Applicants *

Marla Neustadt *
Linda Yangas *
Edna Proestel *
Deborah Berggren *

In opposition to the Application *

Ivan Eloisa *
Department of Housing and *
Community Affairs *

Before: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE.....	3
II. FACTUAL BACKGROUND.....	6
A. The Subject Property	6
B. The Surrounding Neighborhood.....	9
C. The Master Plan.....	11
D. The Proposed Use.....	14
E. Adequacy of Parking.....	18
F. Adequacy of Public Facilities and Traffic Impacts.....	29
G. Environmental Impacts.....	31
H. Community Response.....	31
III. SUMMARY OF THE HEARING	33
IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....	33
A. Necessary Findings (Article 59.7).....	34
B. Accessory Apartment Use Standards (Article 59.3).....	42

C. Development Standards of the Zone (Article 59.4) 50
D. Applicable General Development Standards (Article 59.6) 51
E. Additional Requirements..... 52
V. DECISION 53

I. STATEMENT OF THE CASE

Application CU 15-01, filed January 22, 2015, by Applicants, Otto O. Troxler and Gabriela A. Ferreyra (Applicants or Applicant), seeks approval of a conditional use to allow an attached accessory apartment in accordance with Zoning Ordinance §§ 59.3.3.3.A & B and 59.7.3.1.E.¹ The accessory apartment will be located in the basement of an existing one-story single-family dwelling located at 9605 Rockville Pike, Bethesda, Maryland. The property is further described as Lot 11, Block 8 in the Locust Hill Estates (Tax Account Number 00598185) and in the R-60 Zone.² Exhibit 1.

This case arises from a Referral Notice from the Department of Housing and Community Affairs (DHCA) dated December 2, 2014, advising Applicants that the property did not meet the on-site parking requirements (no driveway) for a Class III Accessory Apartment License under the licensing provisions found in Section 29-19 of the Montgomery County Code. Exhibit 34, Attachment A. Applicants were referred to the Office of Zoning and Administrative Hearings (OZAH) to apply for a conditional use to deviate from the on-site parking limited use standards for an accessory apartment use as provided in Sections 59.3.3.3.A & B of the Zoning Ordinance.

The Hearing Examiner is authorized to hear and decide this type of petition pursuant to Section 59.7.3.1 of the Zoning Ordinance. The public hearing before the Hearing Examiner was scheduled for Thursday, May 15, 2015, in a Notice of Hearing issued on January 29, 2015. Exhibit 17.

Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

² The property is jointly owned by the Applicants. Exhibit 5. Gabriella Ferreyra submitted an Affidavit consenting to the application because she did not sign the original application. Exhibit 38.

report recommending approval of the application on May 1, 2015, subject to three conditions: 1) The Applicant is bound by all submitted statements and materials of record; 2) The total number of occupants residing in the accessory apartment who are 18 years or older is limited to 2; and 3) No other rental residential uses are allowed to be located on the subject site. Exhibit 34, p. 2.

DHCA Housing Code Inspector, Ivan Eloisa inspected the property on April 24, 2015, and reported his findings in a memorandum dated May 5, 2015. Exhibit 36. Based on a review of the modified floor plan submitted at the hearing, Mr. Eloisa filed an amended report dated May 19, 2015. The issues identified in the report included the need to obtain an electrical permit for installation of the stove, comply with the minimum height requirements for beams, girders or other obstructions, install a missing handrail for exterior steps, and replace and install locks for exterior and interior doors separating the accessory apartment from the main dwelling. Exhibit 43.

The hearing went forward as scheduled on May 15, 2015. Applicants Otto Troxler and Gabriela Ferreyra appeared *pro se*. Both testified in support of the application and accepted and adopted the findings and conclusions in the Technical Staff report as their own evidence of record and agreed to comply with the conditions of approval. Applicants submitted an executed Affidavit of Posting, Affidavit by Gabriela Ferreyra, and modified floor plan. Exhibits 11(a), 38 and 39. The property survey was modified to show the existing fence, walkway and exterior lighting for the property. Exhibit 8. Mr. Eloisa testified on behalf of DHCA and presented his report.

A signed letter of opposition from approximately 32 Locust Hill Estates residents was submitted prior to the hearing (Community Letter).³ Exhibit 33(a). The following four individuals

³After the hearing, two residents submitted a written request to remove their names and signature from the community letter. Exhibit 42.

from the Locust Hill Estates community testified in opposition to the application: Marla Neustadt, Edna Proestel, Linda Yangas and Deborah Berggren (Parties of Record). Robert Proestel was also present but did not testify. The Parties of Record all live on Bellevue Drive and signed the community letter. The record was held open until June 1, 2015, to allow time to receive the hearing transcript, the amended housing inspection report, and additional written material from Applicants and/or the Parties of Record.

Prior to the close of the record, Applicants submitted supplemental written material. Exhibits 46-47. In order to provide the Parties of Record an opportunity to review and comment on the supplemental evidence, the Hearing Examiner extended the closing of the record from June 1, 2015, to June 22, 2015, with filing deadlines, by Order dated June 1, 2015. Exhibit 49. The Parties of Record were given ten (10) days or until the close of business on June 12, 2015, to review and submit written comments and material. The record was left open an additional ten (10) days for Applicants to submit final written comments and material in response to comments from the Parties of Record. Having received no additional written comments or material from either the Parties of Record or Applicants by the respective filing dates, the record closed as scheduled on June 22, 2015. By Order dated July 22, 2015, the Hearing Examiner extended the time to file this Report and Decision from July 22, 2015, to August 5, 2015. Exhibit 56.

Based on a thorough review of the entire record, and for the reasons stated herein, the Hearing Examiner finds sufficient evidence that there is adequate on-street parking to grant Applicants' request to deviate from the minimum on-site parking requirements for an attached accessory apartment pursuant to Section 59.3.3.3.A.2.c. Further, the Hearing Examiner finds the general and specific standards for a conditional use application for an attached accessory apartment have been satisfied.

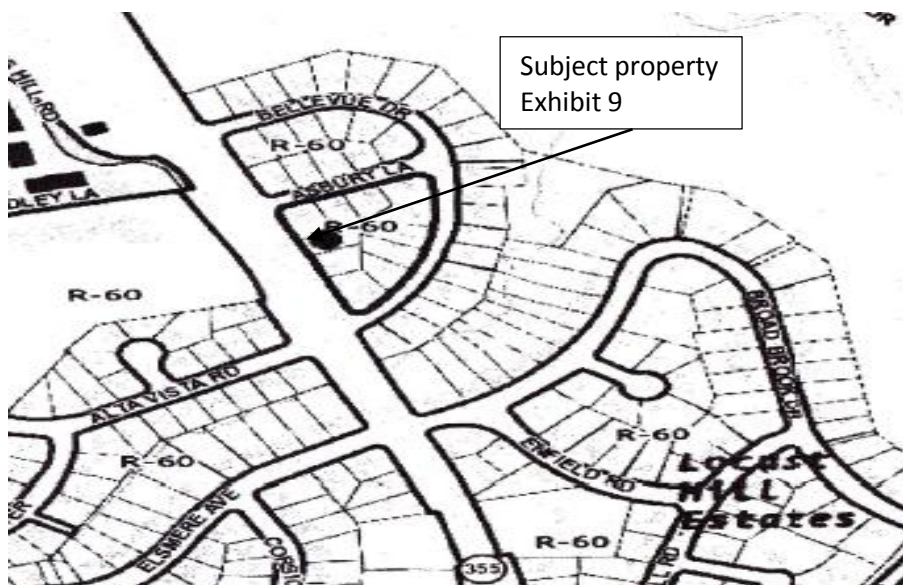
Therefore, the Hearing Examiner approves the conditional use application for an attached accessory apartment, subject to the conditions set forth in Part V of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 9605 Rockville Pike, Bethesda, in the Locust Hill Estates Subdivision, and within the boundaries of the *1990 Bethesda Chevy-Chase Master Plan*. The interior lot is 10,492 square feet in size with approximately 70 feet of frontage. The property is one of two properties that front on the east side of a public service road that is parallel with Rockville Pike. Staff reports that the service road is approximately 20 feet wide with no sidewalks and unrestricted parking on the east side. The property is located north of the intersection of Bellevue Drive and Rockville Pike and south of Asbury Lane. Exhibit 34, Attachment C.

The Master Plan Map and an aerial photograph of the area is shown below and on the next page (Exhibits 9 and 47, p.1):





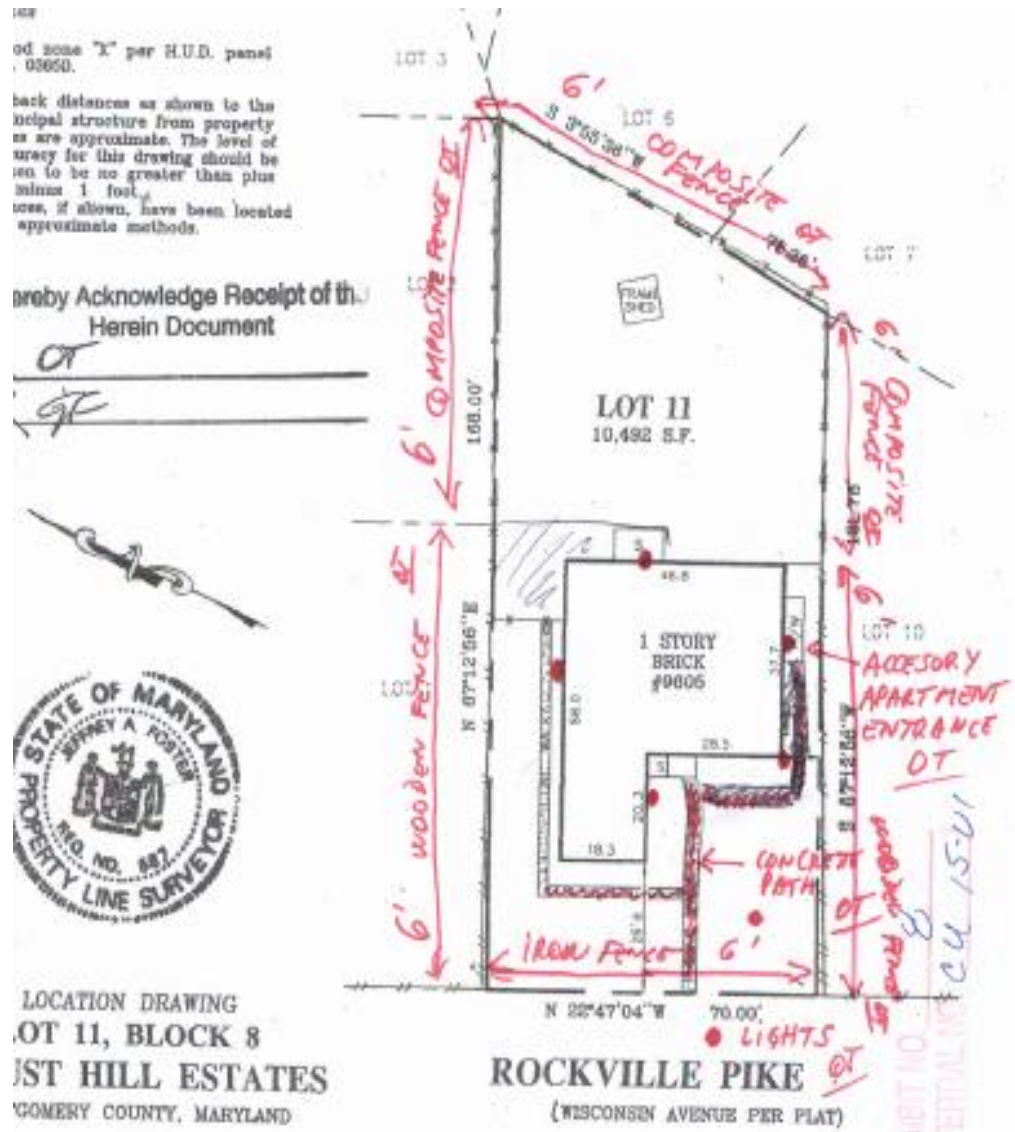
Aerial view of Neighborhood
(Source: Google Earth 10/17/2014)
Exhibit 47, p.1.

The lot is improved with a one-story single-family dwelling with a basement built in 1952. The property does not have a driveway.⁴ Property tax records indicate that the enclosed area for the main dwelling is approximately 1,868 square feet. The finished basement area is approximately 400 square feet. Exhibit 5. The lot is enclosed with a gate and six-foot fence constructed of iron, wood and composite materials. A row of mature evergreens planted along the front property line screens most of the house from the road. A concrete walkway inside the fence gate provides access to the main dwelling and separate entrance to the basement located on the south side of the property. Based on a site visit in March 2015, Staff reported that “the exterior of the house was in good

⁴ The Hearing Examiner inserted page numbers for the 11 pages contained in Exhibit 47. The three other properties in the neighborhood that do not have a driveway are identified with a red box on the aerial photograph of the neighborhood shown above (Exhibit 47, p. 1).

condition and the landscape appeared well maintained.” Exhibit 34, p. 3.

Applicant modified the property survey, shown below, to show the location of the fence, walkway, front and side entrances and existing exterior lighting (Exhibit 8). Photographs of the front gate and entrance to the main dwelling, taken from the Technical Staff report, are shown on the next page of this Decision (Exhibit 34, pp. 3-4):



Property Survey
Exhibit 8



Gate and front door to
property Exhibit 34, p. 3 and 4



B. The Surrounding Neighborhood

Technical Staff defined the general neighborhood surrounding the property as follows

(Exhibit 34, p. 4):

The neighborhood boundary, delineated with a yellow outline [shown below], is drawn to include any properties that may be affected by any potential increase in traffic or density. The neighborhood is generally bound by MD 355 to the west, I-495 to the north and east, and Broad Brook Drive to the south. The neighborhood includes 55 detached houses and Locust Hill Neighborhood Park to the east.

The Hearing Examiner would add that the immediate neighborhood surrounding the subject

property is located in the northeast quadrant of the Locust Hill Estates and includes 42 of the 55 detached houses Staff identified as part of the general neighborhood. Sole access into and out of this section of the general neighborhood is at the intersection of Bellevue Drive and Rockville Pike to the south and north of Broad Brook Drive. Having no evidence to the contrary, the Hearing Examiner accepts Technical Staff's definition of the general neighborhood.

Technical Staff provided an aerial photograph of the area and the neighborhood boundary has been drawn to include any nearby properties that may be affected by a potential increase in density or traffic, shown below (Exhibit 34, p. 5):



Figure 3: Ariel view with neighborhood boundary outlined in yellow

Technical Staff reports (Exhibit 34, p. 4):

Three attached accessory apartments, approved by special exception, (S-2413 approved in 1999, S-2555 approved in 2003, S-2323 approved in 1998) are located within the neighborhood. The three accessory apartments are located within 300 feet of the subject property but are not located [along] the same block face as the subject property. No other conditional uses (special exceptions) are recorded within the neighborhood.

Because the existing accessory apartments are residential in nature and conform to the recommendations of the *Bethesda Chevy Chase Master Plan*, Staff found: “[t]he addition of one accessory apartment to neighborhood will not adversely affect or alter the neighborhood’s residential character.” Exhibit 34, p. 10.

C. The Master Plan

The subject property lies within the geographic area covered by the *Bethesda Chevy Chase Master Plan*, approved and adopted in April 1990 (Master Plan or Plan).

Technical Staff advises (Exhibit 34, p. 6):

The Plan does not have a specific recommendation for this property, but it provides guidelines to protect residential areas while attempting to meet important social needs (p. 31). The Plan endorses the expansion of housing choices within the area by provision of accessory apartments (p. 33). Since the subject application adds another housing option to the neighborhood, the proposed accessory apartment is consistent with the Plan.

The Hearing Examiner adds that the Plan reconfirms the R-60 zoning and accessory apartments are permitted in the zone as a conditional use. The Bethesda Chevy Chase area is dominated by single-family homes resulting in “serious lack of housing choices to meet the needs of people in varied stages of life, lifestyles, or financial situations.” *Plan*, p. 26. A stated goal of the Plan is to “[p]rovide for a balanced housing supply so that persons of varying income levels, age, backgrounds, and household characteristics may find suitable housing appropriate to their needs.” *Plan*, p. 19. The proposed accessory apartment will provide an affordable choice of

housing in a residential neighborhood with easy access to major highways, public transportation and other public amenities and services.

The Plan endorses the location of conditional uses in a residential area. To ensure the preservation of the residential character of the neighborhood, the Plan recommends the Hearing Examiner consider whether approval of the proposed conditional use will result in an excessive concentration of conditional uses in the neighborhood. *Plan*, p. 31. Staff reports there are three accessory apartments, approved by special exception (now conditional uses), in 1998, 1999 and 2003. Two are located on the south side of Bellevue Drive (near the intersection with Rockville Pike) and one is a corner lot located on the north side of Asbury Lane and along the east side of the service road (second block). There are 42 homes in the neighborhood and Staff reports there are no other approved conditional uses in the neighborhood. Exhibit 34, p. 4.

The residents who testified in opposition report there four unapproved accessory apartments in addition those that have been approved. T. 69; 73-74. They argue that the approval of the proposed accessory apartment will result in an excessive concentration of multi-family dwellings in a neighborhood zoned for single-family dwellings. T. 47. They also report several homes are being rented with many tenants and a few residents are operating businesses out of their home. T. 71-72. As a result, they claim adverse effects associated with the accessory apartments, home rentals and businesses in the neighborhood, including increased traffic, noise, additional occupants (i.e., when an owner occupies accessory apartment and rents out the main dwelling), and lack of on-street parking. T. 59-60; 67-69; 85. In their opinion, the continued approval of accessory apartments is changing the residential character of the neighborhood. Exhibit 33(a). T. 47; 75; 79-81.

The accessory apartment use is by definition a residential use and the standards for

approval are designed to allow a modest level of rental activity in a single family dwelling while avoiding conditions that will adversely alter or change the residential character of the neighborhood. The accessory apartment is internal to the main dwelling with a separate entrance. To maintain the residential appearance of the single-family dwelling the accessory apartment must have the same address as the main dwelling. Occupancy is limited to no more than two individuals over the age of 18 and the size of the unit cannot be more than 50% of the gross square footage of the main dwelling or no more than 1,200 square feet. Thus, the accessory apartment will be subordinate to the main dwelling. To prevent owners from creating two separate rental units or renting a room in the main dwelling, no other residential rental uses are permitted on the property. Any modifications must be compatible with the residential character of the dwelling and surrounding neighborhood. Adequate on-street parking must be available if there is no on-site parking.

Accessory apartment use is therefore not distinguishable from the main dwelling and the increase in activity and intensity of use is minimal given its residential use and the restriction in size and occupancy. Therefore, the regulatory limits permit a single-family neighborhood to accommodate a number of accessory apartments without adverse effects sufficient to alter the residential character of the neighborhood.

Here, the proposed accessory apartment use is not distinguishable from the main dwelling. The separate entrance and main dwelling is not visible from the street because the property is enclosed with a six-foot fence with mature trees growing along the front of the property. No exterior modifications to property, dwelling or exterior lighting are proposed. Thus, the residential appearance of the single-family dwelling is maintained and compatible with the residential character of the surrounding neighborhood. Also, there is adequate on-street parking

in front of the subject property to accommodate the main dwelling and accessory apartment use.

The Hearing Examiner, considering there are only three recorded and approved conditional uses, all accessory apartments, in the neighborhood, finds that the addition of a fourth accessory apartment to the neighborhood will not result in an excessive concentration given its residential nature and the adequacy of on-street parking.⁵ For the reasons stated, the Hearing Examiner concurs with Technical Staff and finds that the proposed use is consistent with the *Bethesda Chevy Chase Master Plan*.

D. The Proposed Use

The proposed use will be located in the basement of the main dwelling. As it currently exists, the basement includes a bedroom, living room, kitchen, bathroom and closet. Exhibit 11. Applicants' intent is to rent the apartment for single occupancy. Dr. Ferreyra works at National Institute of Health (NIH) and Applicants would like to rent the unit to NIH personnel because there is a shortage of housing in the area. Exhibit 2; T. 10.

Technical Staff reports (Exhibit 34, p. 5):

A walkway leads from the front of the house to the proposed accessory apartment [entrance] on the side of the house []. Adequate lighting, residential in character, is located next to the accessory apartment entrance. The entrance appears as a typical basement entrance, and does not detract from the appearance of the existing house []. The Applicant does not propose any exterior modifications to the house.

Applicants modified the property survey, previously shown on page 8 of this Decision, to show the location of the fence, walkway, front and side entrances and existing exterior lighting. Exhibit 8. Applicants propose to use the existing light fixtures, which consist of a post light at the front gate, porch lights at the front, side and rear entrances, and a floodlight mounted on the southwest corner of

⁵ Mr. Eloisa advised the residents to file a complaint with DHCA to report other unapproved accessory apartments in the neighborhood. T. 74.

the dwelling to illuminate the walkway to the accessory apartment entrance. Staff found the lighting at the accessory apartment to be residential in character but did not specifically comment on the residential character of the other light fixtures. Exhibit 34, p. 5.

Based on the nature and location of the existing lighting, it is reasonable to infer, absent evidence to the contrary, that the exterior lighting is residential in character and compatible with the single-family dwelling and surrounding neighborhood. The floodlight on the southwest side is in the appropriate location to provide the necessary illumination for the walkway to the accessory apartment entrance. Thus, it is also reasonable to infer that the fixture is directed down towards the walkway and the illumination will not extend beyond the property lot line. Having no evidence to the contrary, the Hearing Examiner finds that the existing exterior lighting will cause no objectionable illumination or glare given its residential use.

Staff provided the following photographs of the walkway and entrance to the accessory apartment (Exhibit 34, p. 6):



Figure 5: Walkway to entrance of accessory apartment



Figure 4: Entrance to accessory apartment

DHCA Housing Code Inspector, Ivan Eloisa, inspected the unit on April 24, 2015. Mr. Eloisa reported his findings in a memorandum dated May 5, 2015. He reported that the one-bedroom unit is approximately 590 gross square feet in size. The substance of his report is set forth below (Exhibit 36):

The issues regarding Accessory Apartment standards are as follows:

1. Install egress window in the proposed bedroom area. The window shall be at least five [5] square feet in net clear opening. Must be openable without the use of a tool with a minimum net clear width of 20 inches, with the bottom of the opening not more than 44 inches above the floor. A building permit may be required for the installation.
2. Beams, girder, ducts or other obstructions may have a height of not less than 6 feet 4 inches.
3. Obtain an electrical permit for the basement electric stove installation.
4. Interior walls separating the Accessory Apartment from the main dwelling must be finished on both sides.
5. Install missing handrail for exterior steps leading to the basement unit entrance.
6. Replace double cylinder deadbolt lock with a single cylinder lock that operates with a thumb [turn] from inside and a key from the outside premises.
7. Install lock on interior door separating the basement dwelling from the main dwelling.

Mr. Eloisa testified that the existing bedroom window could not be enlarged to meet the size requirements for an egress window because of its location (issue no. 1). As a result, he stated that this room could not be used as a bedroom. He also reported that the passage into the bathroom is 6 feet 1 inch from the floor and therefore does not meet the minimum height requirement of 6 feet 4 inches (issue no. 2). Mr. Eloisa testified that he did not observe any issues with the on-street parking in front of the property at the time of the inspection which occurred at

approximately 10:00 a.m. T. 37-38.

Applicants modified the floor plan to eliminate the proposed bedroom and convert the one-bedroom unit into an efficiency estimated to be approximately 460 gross square feet. The modified floor plan is shown below (Exhibit 11(a)):



Mr. Eloisa reviewed the modified floor plan at the hearing. He amended his report to delete issue no. 1 (install an egress window in the bedroom) and issue no. 4 (finish bedroom walls). An amended report dated May 19, 2015, was submitted after the hearing and before the record closed. There were no changes to the remaining issues in the original report which were re-numbered and incorporated in the amended report. Exhibit 43; T. 38-41. Applicants testified that they will comply with the findings of the housing inspection report. T. 14.

E. Adequacy of Parking

For an accessory apartment use, Applicants are required to provide one on-site parking space for the proposed use in addition to the two spaces required for the main dwelling. Section 59.3.3.3.A.2.a.iii. (b) of the Zoning Ordinance. The property does not have a driveway and the Applicants are not proposing to install a driveway.⁶ Based on a Referral Notice from DHCA, Applicants filed this conditional use application seeking a waiver of the on-site parking requirements. Exhibit 34, Attachment A.

Section 59.3.3.3.A.2.c states:

c. Where an Accessory Apartment conditional use is filed under Section 3.3.3.A.2.b, the Accessory Apartment may be permitted by the Hearing Examiner under the limited use standards in Section 3.3.3.A.2.a, Section 7.3.1, Conditional Use, and the following standards:

- i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:
 - (a) The available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular

⁶ The Applicants testified that they considered installing a driveway when they purchased the home in 2007. However, they chose not to do so because the driveway would have been too close to the house and would have required the removal of a few evergreens and part of the fence. Further, they wanted to maintain the enclosed yard. T. 87-92.

basis; and

- (b) The proposed Accessory Apartment is likely to reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

Technical Staff reports (Exhibit 34, p. 12):

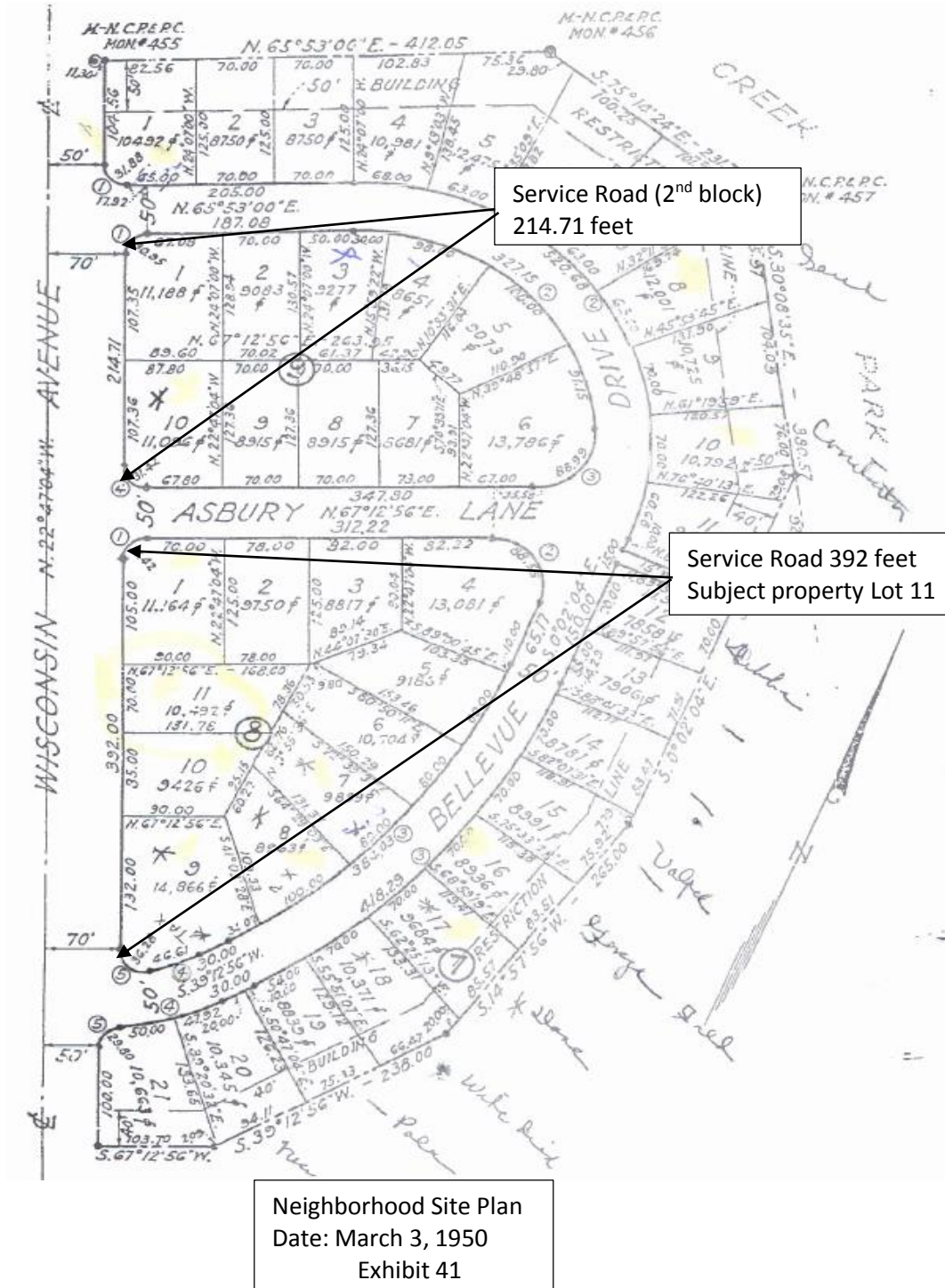
Parking on the service road is adequate to serve both the primary residence and the accessory apartment use. The subject property has 70 feet of frontage on the service road, which is enough to park three cars. Only one other house on the block fronts on the service road so on-street parking demand is relatively low. Furthermore, the property is also served by public transportation; Ride-On bus stop is located 350 feet from the property [at the intersection of Bellevue Drive and Rockville Pike].

Mr. Eloisa testified that he did not observe any problems with on-street parking in front of the property when he visited the property at around 10:00 a.m. to inspect the unit on April 24, 2015. T. 37.

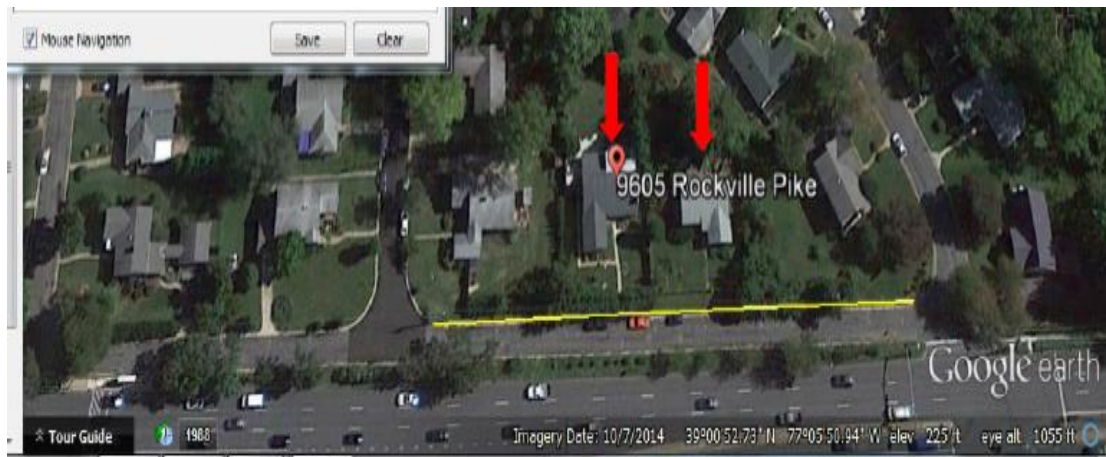
Mr. Troxler testified that the service road from Bellevue Drive (south entrance) to Asbury Lane is approximately 230 feet long with enough space to park 19 vehicles. T. 85-86. He amended the length of the service road from 230 feet to approximately 400 feet in supplemental information provided after the hearing. Exhibit 47, p.2. Ms. Proestel submitted a copy of an approved Washington Suburban Sanitary Commission site development plan of the neighborhood (dated March 3, 1950) she and her husband received when they purchased the property.⁷ Exhibit 41. The site plan (shown on the next page) provides the length of the two blocks of the service road. The first block extends from Bellevue Drive (south entrance) to Asbury Lane and is approximately 392 feet in length. The second block extends from Asbury Lane to the north end of Bellevue

⁷ Staff reported that the subject lot was approved March 14, 1950. Thus, absent evidence to the contrary, it is reasonable to presume the property lot measurements are correct and the approximate length of the service road is accurate. Exhibit 34, p. 8.

Drive and is approximately 214.71 feet in length.



Applicant provided an aerial view of the length of the service road (yellow line), shown on the next page of this Decision (Exhibit 47, p. 2).



Aerial view of length of service road is 392 feet (yellow line) (Source: Google Earth 10/7/2014)
Exhibit 47, p. 2

Mr. Troxler testified that he and his wife have never had any problems parking their three vehicles in front of their house and have never had to park on Asbury Lane due to a lack of parking on the service road.⁸ T. 14-16. The tenants on the adjacent lot have two vehicles. He reported that there are only 5 vehicles parked on the service road on a regular basis. He noted that two nights a week there may be a few more cars parked on the service road when the neighbor has friends over after work to do yoga. In response to resident testimony that there are many cars parked on the service road, he admitted that on special occasions (e.g., when they have friends over or the neighbor has a party) there may be between 10 and 30 vehicles on the service road. T. 93-94. However, with the exception of the 5 vehicles between the two houses, there are no other cars parked on the service road on a regular basis. T. 14-15; 93-94.

To illustrate the parking conditions on the service road, Applicants provided the

⁸ Mr. Troxler testified that he owns four cars but only parks three in front of his property. T. 94.

following aerial photographs taken in 2012 and 2014 (source: Google Earth) (Exhibit 47, p. 3):

March 2012 – Source: Google Street View - Service Road view from Bellevue Dr – Subject Property entrance w/red arrow



October 2014 – Source: Google Street View – Service Road view from Rockville Pike – Subject Property in red



October 7th 2014 - Source: Google earth Aerial picture of service road



Aerial views of service road
Exhibit 47, p. 3.

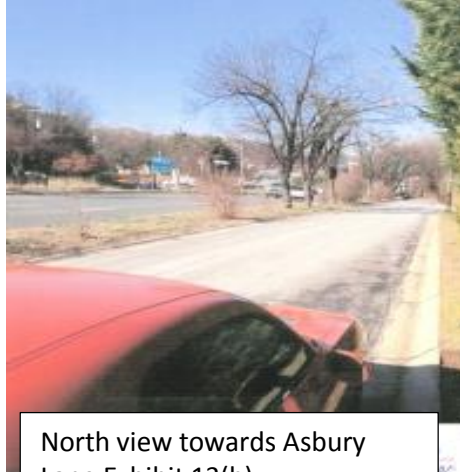
Applicant provided the more recent photographs of the neighborhood parking and

along the service road, taken on the date and times indicated, shown below and on the next page (Exhibits 13 (a)-(b) and 47. P. 8-9):

Service road from entrance to subject property in February 2015



South view towards Bellevue Drive Exhibit 13(a)



North view towards Asbury Lane Exhibit 13(b)

Service road in front of property in May 2015 Exhibit 47 (below)

Thursday 5/21/15 – 8:00 am - South view and North view of the services road at subject property site



Thursday 5/21/15 – 5:30 pm - South view and North view of the services road at subject property site



Thursday 5/21/15 – 5:30 pm Neighborhood – View of intersection Bellevue Dr and Asbury Ln and View of Bellevue Dr from service road



Thursday 5/21/15 – 5:30 pm Neighborhood – View of Asbury Ln from service road



Thursday 5/21/15 – 5:30 pm Neighborhood – View of Bellevue Dr and view of Asbury Ln at intersection of Bellevue Dr



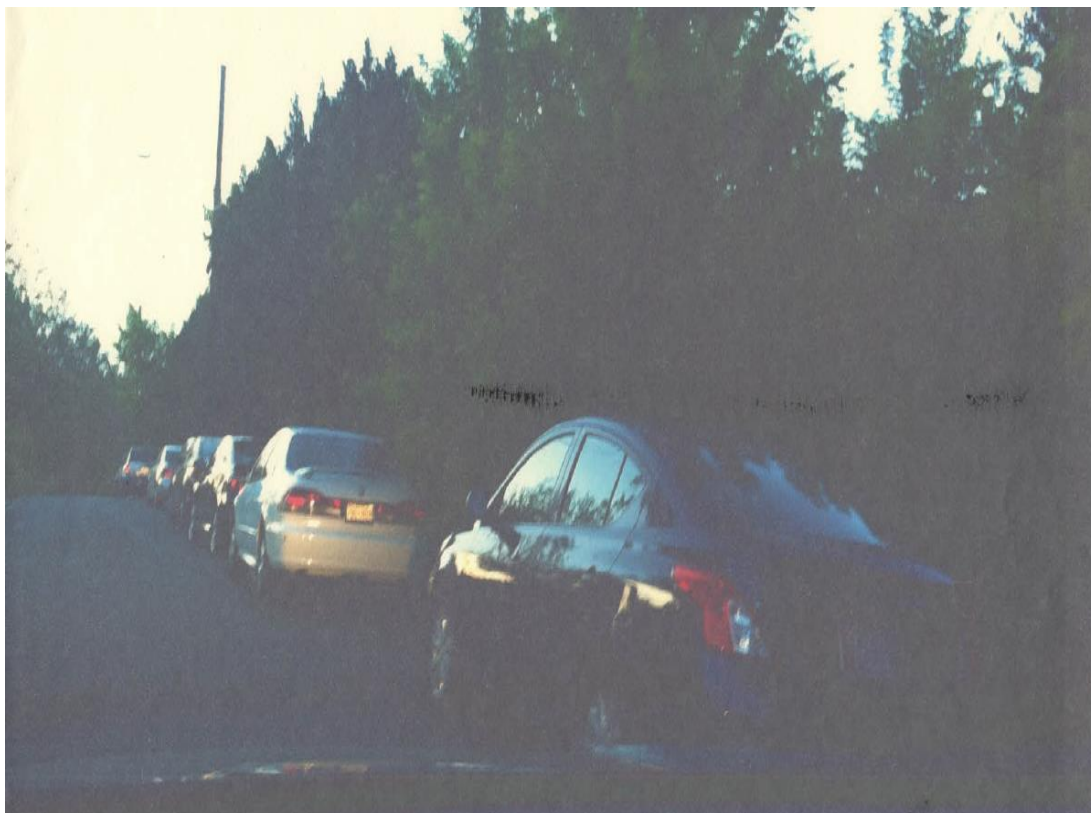
Street views (as indicated above) of the neighborhood taken May 21, 2015
Exhibit 47, 8-9.

Four residents testified in opposition to the application. They all reside on Bellevue Drive and signed the community letter dated April 21, 2015, opposing the proposed accessory apartment. Exhibit 33(a). They expressed their concerns that the single-family homes are being converted into multi-family dwellings which is inconsistent with the single-family residential zone. They also claim that approval of the proposed accessory apartment will create more traffic and noise, and reduce the already limited available on-street parking. However, they also reported the increased traffic and limited on-street parking was due to the increased number of cars generated by the homes with accessory apartments, other rentals, home businesses and extended families. They provided the addresses of 7 homes with accessory apartments, some which are operating without approval.

Ms. Neustadt testified that the home located at 9600 Bellevue Drive (corner lot at south end of service road) has two vehicles and generates a “high level of auto activity” possibly related to the operation of a home business. The house next to the subject property is a rental unit with a number of vehicles. She also noted that the house located at 4906 Asbury Lane (corner lot abutting subject property to the north) has a large extended family that visits which results in an increased number of vehicles for that dwelling. Ms. Neustadt confirmed that the properties fronting Asbury Lane and Bellevue Drive each have a driveway. However, she was not able to provide any details to confirm whether the occupants at either property or other properties located within 300 feet of the subject property actually parked on the service road on a regular basis. T. 53-56.

Ms. Neustadt testified that not all of the homes on Bellevue Drive have a

driveway and there are times travel is reduced to one lane because of the parked cars along both sides of the street. She reported that residents new to the neighborhood have installed driveways as a result of the parking issues in the neighborhood while other residents use the service road for overflow parking because of the parking issues on Bellevue Drive. She submitted the following photograph taken a few days prior to the hearing showing six vehicles parked on the service road (Exhibit 40):



View of Service Road (from Bellevue Drive)
a few days prior to May 15, 2015, Hearing.
Exhibit 40

In her opinion, Ms. Neustadt stated that the addition of too many cars on the service road “would change the parking habits of those who currently use it.” T. 57. She is also concerned that more vehicles on the service road will increase the risk of cars being side-

swiped during inclement weather because the road slopes. She confirmed that the proposed use will not change or affect her parking habits or those of residents in homes around her because they all have driveways and a garage. T. 56-58.

In response, Mr. Troxler testified that he has never observed any of the residents from the neighborhood park on or use the service road for overflow parking.⁹ He confirmed that two of the six vehicles shown in the photograph submitted by Ms. Neustadt (Exhibit 40) belonged to him and were parked in front of his property. The remaining four cars belonged to the next door neighbor and their friends who come over twice a week to do yoga. T. 89-90.

In a signed letter dated May 27, [2015], Applicants reported 39 out of 42 homes (92.85%) in the neighborhood have a driveway, many with a garage and/or carport.¹⁰ Exhibit 46. Applicant identified the location of the 3 homes (red box) that do not have a driveway on an aerial photograph of the neighborhood, previously shown on page 7 of this Decision, Exhibit 47, p. 1.¹¹

Technical Staff reports (Exhibit 34, pp. 16 and 17):

Street parking is adequate. The subject property and properties within 300 feet of the proposed accessory apartment have street frontages of 70 feet or more, allowing adequate space for at least three average size cars to park on-street in front of each property. Furthermore, some of these properties have driveways which reduce the demand for on-street parking. The amount of parking directly in front of the property is sufficient to ensure that this accessory apartment will not prevent a resident within 300 feet of

⁹ In response to Mr. Troxler's statement that he has "never seen one neighbor parking [on the service road]," Mrs. Berggren stated, "Well I never have either [.] " T. 86.

¹⁰ This information was received after the hearing and before the record was scheduled to close on June 1, 2015. In order to provide the Parties of Record (the four residents who testified at the hearing) an opportunity to review and provide written material (e.g., comments and/or photographs), the Hearing Examiner extended the closing of the record from June 1, 2015 to June 22, 2015, with filing deadlines. No additional information was received from either the Applicants or the Parties of Record and the record closed as scheduled.

¹¹ The three properties that Applicant reported did not have a driveway are located at 9603 and 9605 Rockville Pike and 9721 Bellevue Drive.

the subject property from parking on-street near his or her residence on a regular basis.

Technical Staff concluded that, “[t]he addition of one car associated with the proposed accessory use is unlikely to reduce the availability of on-street parking within 300 feet of the proposed accessory apartment.” *Id.*, p. 17.

Based on the evidence presented, including the testimony from the residents in opposition to the application, the Hearing Examiner agrees with Technical Staff and finds that there is adequate on-street parking in front of the property and along the service road to accommodate the main dwelling and accessory apartment use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property.

The service road has unrestricted parking along the east side which is estimated to be approximately 392 feet long and provides sufficient space to meet the parking needs for the two properties that front the service road, which is approximately 5 cars (three for the subject property and two for the adjacent property). Other than to assert that other residents in the neighborhood used the service road for “overflow parking”, none of the residents offered any facts showing that the residents within 300 feet of the proposed use, or from within the neighborhood, actually parked on the service road on a regular basis.

The service road is certainly long enough to accommodate “overflow parking” for the neighborhood during special occasions. However, there simply was insufficient proof that residents from the neighborhood, other than the two properties that front the service road, actually parked on the service road on a regular basis, or that the addition of one vehicle from the proposed use would adversely affect or reduce the availability of on-street parking for residents located within 300 feet of the subject property.

For these reasons, the Hearing Examiner agrees with Staff and finds there is adequate on-street parking to accommodate the main dwelling and accessory apartment without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property. Therefore, the Hearing Examiner finds there is sufficient evidence to grant Applicants' request to deviate from the on-site parking requirements for an attached accessory apartment conditional use in accordance with Section 59.3.3.3.A.2.c.

F. Adequacy of Public Facilities and Traffic Impacts

The application does not require approval of a preliminary plan of subdivision. Therefore, the Hearing Examiner must determine whether the road capacity is adequate under Section 50-35(k), as implemented by the Subdivision Staging Policy (Council Resolution 17-601, adopted on November 13, 2012), and the Planning Board's Guidelines for Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR).

LATR Guidelines are intended to determine "the adequacy of the local road network by measuring congestion at roadway intersections based on critical lane volume (CLV) and volume capacity ratio (v/c). *Local Area Transportation Review and Transportation Policy Area Review Guidelines* (adopted January 24, 2013) (Guidelines). LATR projects the impact of trips to be generated by the proposed use, taking into account the existing use. Applications that are estimated to generate fewer than 30 trips are exempt from LATR review, but must submit a "Traffic Exemption Statement" to demonstrate that the number of trips generated by the proposal will be under the 30-trip maximum. *Guidelines*, p. 3.

The Applicants submitted a Traffic Exemption Statement that did not provide an estimate of the number of trips that the proposed use would generate. However, given the Applicants' intent to rent the accessory apartment (efficiency) to one tenant, it is reasonable to infer that the proposed accessory apartment use will generate a minimum of one new trip during

the morning and evening peak hours. Exhibit 7. Thus, the proposed use and existing use will generate one peak-hour trip during the weekday morning and evening peak periods. As a result, the LATR test is satisfied.

TPAR requires a review of whether roadways or transit facilities are adequate to serve a larger geographic area, known as a “policy area.” It measures average transportation system performance throughout the policy area. If either roads or transit system performance do not meet certain mandates, service in the policy area is deemed inadequate and a tax may be assessed against new development if the owner does not otherwise mitigate the traffic impact of the use. *Guidelines* at 30. Because the use will generate less than three peak hour trips, it is exempt from the TPAR test.

In a memorandum dated March 31, 2015, Technical Staff recommended approval of the proposed conditional use application based on the findings of their review as follows (Exhibit 34, Attachment C):

Master Plan Roadways/Bikeways

Neither the 1990 Bethesda Chevy Chase Master Plan nor the 2005 Countywide Bikeways Functional Master Plan recommend transportation improvements along the site frontage.

Local Area Transportation Review

Using trip generation rates included in the *Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR) Guidelines*, the single-family detached unit on the property is estimated to generate one peak-hour trip during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Using this guidelines, the accessory apartment is estimated to generate one additional peak-hour trip during each of the weekday peak periods. Since the existing house and accessory apartment together will generate fewer than 30 peak-hour trips, a traffic study is not required for the subject [application]. As a result, the subject [application] satisfies the LATR requirement of the ADF test.

Transportation Policy Area Review (TPAR)

As noted above, the single-family detached unit and the accessory apartment on the property together will generate less than three peak-hours

trips during the weekday morning and evening peak periods. Therefore, the subject [application] is not subject to the TPAR requirements of the ADF.

Technical Staff found that the “proposed conditional use will be adequately served by public services and facilities,” and that the proposed use “will not have an adverse effect on the roadway, pedestrian, and bicycle network in the immediate area.” *Id.*, p. 10, Attachment C

Due to the small scale of the proposed use, and the availability of adequate on-street parking in front of the subject property, the Hearing Examiner has no basis in this record to disagree with the findings of Technical Staff and therefore agrees that the accessory apartment satisfies the LATR and TPAR tests. The Hearing Examiner agrees with Staff and finds that the proposed use will not have an adverse impact on the area roadways and pedestrian facilities. There being no evidence in the record to the contrary, the Hearing Examiner so finds.

G. Environmental Impacts

Based on a site visit to the property in March 2015, Technical Staff reported that the property is well-maintained and landscaped. Exhibit 34, p. 3. In a report dated March 31, 2015, Environmental Staff reported (Exhibit 34, Attachment D):

There are no champion trees on or near the subject property (and there are no exterior modifications or disturbances proposed). Therefore, the forest conservation law does not apply to this conditional use, since the property is less than 40,000 square feet. A non-applicability form was previously signed off by Staff on January 15, 2015, and was included in the submission packet as exhibit NO. 5.

There are no forest conservation or environmental issues associated with the request and the [application] is [recommended] for approval.

Based on this evidence, the Hearing Examiner agrees with Technical Staff and concludes that Applicants’ request will have no adverse environmental impacts.

H. Community Response

One letter of opposition signed by 32 Locust Hill Estates residents was submitted prior to

the hearing. Exhibit 33(a). After the hearing, two residents who signed the community letter, James and Marie Turner, submitted a written request to strike their names and signatures from the community letter. Exhibit 42.

Four residents, Marla Neustadt, Edna Proestel, Linda Yangas and Deborah Berggren, testified in opposition to the application at the hearing. They all reside on Bellevue Drive and signed the community letter dated April 21, 2015, opposing the proposed accessory apartment. Exhibit 33(a). A summary of their individual testimony, including their questioning of the Applicant, is set forth in the Appendix attached to this Decision. The residents' testimony was consistent with the concerns raised in the community letter submitted prior to the hearing. Exhibit 33(a).

The residents expressed their concerns that the single-family homes are being converted into multi-family dwellings which is inconsistent with the single-family residential zone. They reported that there are 7 accessory apartments, some of which are not approved, located at: 4906 and 4909 Asbury Lane and 9602, 9604, [9611], 9707 and 9721 Bellevue Drive. They assert that if the proposed accessory apartment is approved, the total number of accessory apartments, including those uses that do not require a permit, will be more than 20% of the homes in the neighborhood.

The residents believe approval of the proposed accessory apartment and the addition of another vehicle to the neighborhood will only create more traffic and noise, and reduce the limited available on-street parking. The residents reported the increase in traffic and limited on-street parking is also due to the increased number of cars associated with a number of home rentals, extended families, and businesses operating within the neighborhood. They report serious traffic problems result from accidents that

frequently occur on Rockville Pike. They also report an increase in turn-around traffic of vehicles that enter the neighborhood on the mistaken belief that the neighborhood streets provide a short cut to the beltway.

As a result, the residents argue that approval of the proposed accessory apartment will adversely affect and alter the single-family residential character of the neighborhood, will be detrimental to the use, peaceful enjoyment and economic value of the surrounding properties, and will result in an excessive concentration of conditional uses in the neighborhood.

III. SUMMARY OF THE HEARING

The hearing was held as scheduled on May 15, 2015. Applicants Otto Troxler and Gabriela Ferreyra testified in support of the application. DHCA Housing Code Inspector, Ivan Eloisa, testified on behalf of DHCA and presented the housing inspection report dated May 5, 2015 (Exhibit 36). As discussed in the previous section, four residents from the Locust Hill Estates Subdivision testified in opposition to the application. A summary of all the testimony from the hearing is summarized in an Appendix to this Report and Decision, which is incorporated herein.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. Section §59.7.3.1.E of the Zoning Ordinance. Specific standards are those which apply to the particular use requested; in this case, an attached accessory apartment use. Zoning Ordinance §§ 59.3.3.3.A & B.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code § 7.1.1), the Hearing Examiner concludes that the conditional use

proposed in this application satisfies all of the specific and general requirements for this use, as discussed below, and with the conditions of approval set forth in Part V, below.

A. Necessary Findings (Article 59.7)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below:

Section 59.7.3.1.E Necessary Findings

- a. satisfies any applicable previous approval on the subject site, or if not, that the previous approval must be amended;*

Conclusion: Staff advises that this standard is satisfied because the lot was approved (plat 2480) on March 14, 1950. Exhibit 34, p. 8. There are no other prior applicable approvals on the subject property. Having no evidence to the contrary, the Hearing Examiner finds and concludes that this standard has been met.

- b. satisfies the requirements of the zone, use standards under Article 59.3, and applicable general requirements under Article 59.6;*

Conclusion: The property is located in the R-60 (Residential Detached) Zone which permits accessory apartments as a conditional use. Section 59.4.4.9 of the Zoning Ordinance. For reasons discussed in Part II of this Decision, and based on a finding of adequate on-street parking to grant Applicants' request to deviate from the on-site parking requirements, the Hearing Examiner finds and concludes that the conditional use application satisfies the requirements of Article 59.3, Article 59.4 and Article 59.6, subject to the conditions of approval set forth in Part V of the Decision, below.

- c. substantially conforms with the recommendations of the applicable master plan;*

Conclusion: For the reasons stated in Part II C, of this Decision, the Hearing Examiner finds

and concludes that the proposed accessory apartment use substantially conforms to the recommendations of the *Bethesda Chevy Chase Master Plan*.

- d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

Conclusion: The general neighborhood is comprised of single-family detached residential uses. The accessory apartment is a residential use by definition and will be located in the basement of an existing single-family dwelling. The separate entrance is typical of a side entrance into a single-family dwelling and therefore not distinguishable from the main dwelling. The property is enclosed with a six-foot fence with mature evergreens along the front property line. Thus, most of the dwelling, including the accessory apartment entrance, is not visible from the street. No exterior modifications are proposed and the lighting is residential in character. Occupancy will be limited to one person with minimal impact on intensity of use. There is adequate on-street parking in front of the property to accommodate the proposed use and main dwelling without adversely affecting or reducing the availability of on-street parking for residents within 300 feet of the property. Thus, the Hearing Examiner agrees with Staff that the proposed use “will have only a slight increase on population density, and it will result in only a modest increase in the intensity of use of the property with no change in the residential character of the detached house.” Exhibit 34, p. 10. For these reasons, the Hearing Examiner agrees with Staff and finds and concludes that the proposed use will be harmonious with and will not alter the residential character of the surrounding neighborhood in a manner inconsistent with the *Bethesda Chevy Chase Master Plan*.

- e. will not, when evaluated in conjunction with the existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Conclusion: As previously discussed in Part II B, Staff reported there are three existing attached accessory apartments, approved by special exception, located within 300 feet of the property at the following addresses: 9604 Bellevue Drive (S-2323 approved in 1998); 9602 Asbury Lane (S-2413 approved in 1999); and 4909 Asbury Lane (S-2555 approved in 2003). Exhibit 34, p. 4. All of the accessory apartments have driveways and on-street parking in front of the property. The accessory apartment located at 4909 Asbury Lane also has approximately 100 feet of on-street parking along the east side of the service road. The residents in opposition to the application report that there are a total of seven accessory apartments in the neighborhood, four of which are not approved or licensed. Exhibit 33(a). T. 69. Staff reported that with the exception of the accessory apartments noted above, “[n]o other approved conditional uses (special exceptions) are recorded within the neighborhood.” Exhibit 34, p. 4. Therefore, absent evidence to the contrary, the Hearing Examiner can only consider the three accessory apartments, approved by special exception (now conditional uses) as part of her evaluation under this standard.

As previously discussed in Part II C of this Decision, an attached accessory apartment use is a residential use permitted as a conditional use in the R-60 Zone and substantially conforms to the recommendations of the *Bethesda Chevy Chase Master Plan* to expand housing choices in the area by provision of accessory apartments. Accessory apartments are internal to the principal dwelling with a separate entrance that is typical of an entrance into a single-family dwelling. As such, the accessory apartment use is not distinguishable from the main dwelling use. All three existing accessory apartments have on-site parking (driveway) and on-street parking in front of the property. The corner lot located at 4909 Asbury Lane also has approximately 100 feet of side-yard parking along the east side of the service road (second block north of subject property). There is adequate on-street parking in front of the subject property and along the service road (first block)

to accommodate the proposed use and main dwelling. There was insufficient evidence to indicate that the addition of one vehicle along the first block of the service road will have any adverse effect or reduce the availability of on-street parking for residents located within 300 feet of the subject property. Given the residential nature of an accessory apartment and the availability of on-street parking for the existing and proposed accessory apartment uses, the Hearing Examiner agrees with Staff and finds that the addition of the proposed use to the neighborhood will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Therefore, the Hearing Examiner concludes that this standard has been met.

- f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and;*
 - i. If a preliminary subdivision is not filed concurrently or subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*
 - ii. If a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

Conclusion: The proposed use does not require a preliminary subdivision plan. Therefore, the Hearing Examiner must consider whether roadway capacity is adequate under Section 50-35(k), as implemented by the Subdivision Staging Policy (Council Resolution 17-601, adopted on

November 13, 2012) and the Planning Board's Guidelines for LATR and TPAR.

As discussed in Part II F of this Decision, Technical Staff conducted such reviews and concluded that the proposed accessory apartment use would add one additional trip during each of the peak-hour weekday periods. For the reasons already stated, the Hearing Examiner finds that the proposed use meets this standard.

- g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and non-inherent adverse effect in any of the following categories:*
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
 - ii. traffic, noise, odors, dust, illumination, or lack of parking;
or*
 - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location, on nearby properties, and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance* § 1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristic of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* There are seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment.

Thus, analysis of inherent and non-inherent adverse effects must establish what physical

and operational characteristics are necessarily associated with an attached accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of an accessory apartment use will be considered inherent adverse effects, while those characteristic of an accessory apartment use that are not necessarily associated with an accessory apartment use, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impact sufficient to result in denial.

Technical Staff identified the following inherent characteristics of an accessory apartment (Exhibit 34, p. 11):

1. the existence of the apartment as a separate entity from the main living unit but sharing a party wall with it;
2. the provision within the apartment of the necessary facilities, spaces, and floor area to qualify as habitable space under the applicable code provisions;
3. a separate entrance and walkway and sufficient exterior lighting;
4. sufficient parking;
5. the existence of an additional household on the site with resulting additional activity including more use of outdoor space and more pedestrian, traffic, and parking activity; and
6. the potential for additional noise.

The Hearing Examiner concludes that in general an accessory apartment has characteristics similar to a single-family residence with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found there are no non-inherent adverse impacts associated with the

proposed use and concluded that “[t]he operational and physical characteristics of the proposed accessory apartment are consistent with the inherent characteristic of an accessory apartment use.”

Id., at p. 12.

In support of this conclusion, Staff provided the following summary (*Id.*):

In the case of the proposed accessory apartment, there are no adverse effects that will negatively impact the community above and beyond those necessarily inherent to an accessory apartment use. The apartment will be located in the basement of the house and will not be identifiable from the street. This apartment entrance has the appearance of an entryway to the basement, making it difficult to distinguish from any other neighborhood home. The grounds of the accessory apartment will be safe and the entryway illumination consistent with typical residential standards.

Parking on the service road is adequate to serve both the primary residence and the accessory apartment use. The subject property has 70 feet of frontage on the service road, which is enough to park three cars. Only one other house on the block fronts on the service road, so on-street parking demand is relatively low. Furthermore, the property is also served by public transportation; a Ride-On bus stop is located 350 feet from the property.

The Hearing Examiner adds that occupancy will be limited to one tenant and the modified floor plan converts the one-bedroom unit into a 460 square-foot efficiency. The accessory apartment will be internal to the main dwelling with a separate entrance and walkway that will be illuminated with lighting characteristic of residential homes. The single occupancy will generate only one additional trip and there is ample on-street parking to accommodate both uses. Thus, considering size, scale, scope, noise, traffic and environment, the Hearing Examiner agrees with Technical Staff and concludes that there are no non-inherent adverse effects from the proposed use.

For these reasons, the Hearing Examiner concludes that no inherent or non-inherent adverse effect will cause undue harm to the neighborhood sufficient to deny the proposed

conditional use for an accessory apartment at the subject property.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Conclusion: No exterior modifications to the dwelling are proposed or necessary to accommodate the accessory apartment use. The modified floor plan reflects changes necessary to comply with the code requirements for an accessory apartment use as noted in the DHCA housing inspection report. Exhibit 43. None of the interior modifications will alter or change the residential appearance and character of the main dwelling. Thus, the Hearing Examiner finds and concludes this standard has been met.

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.*

Conclusion: For the reasons discussed in this section, and in Part II of this Decision, the Hearing Examiner finds that the application satisfies the specific requirements for the conditional use and is compatible with the surrounding properties provided Applicants comply with the conditions of approval listed in Part V, of this Decision.

4. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.*

Conclusion: The property and surrounding neighborhood to the south and west is in the R-60 (Residential Detached) Zone. The proposed accessory apartment is a residential use and not an agriculture conditional use. Therefore, the Hearing Examiner finds that this standard is not applicable to the proposed conditional use application.

5. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a*

need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- a. Filling Station;*
- b. Light Vehicle Sales and Rental (Outdoor);*
- c. Swimming Pool (Community); and*
- d. The following Recreation and Entertainment Facility use:
swimming pool, commercial.*

Conclusion: This conditional use application is for an attached accessory apartment in the R-60 (Residential Detached) Zone. The Hearing Examiner finds that this standard is not applicable to the subject application.

- 6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*

- a. Funeral Home; Undertaker;*
- b. Hotel, Motel;*
- c. Shooting Range (Outdoor);*
- d. Drive-Thru;*
- e. Landfill, Incinerator, or Transfer Station; and*
- f. A Public Use Helipad, Heliport or a Public Use Helistop.*

Conclusion: This conditional use application is for an attached accessory apartment in the R-60 (Residential Detached) Zone. The Hearing Examiner finds that this standard is not applicable to the subject application.

B. Accessory Apartment Use Standards (Article 59.3)

The specific standards for approval of an attached accessory apartment use are set out in Section 59.3.3.3.A.2 (Use Standards for all Accessory Apartments) and 59.3.3.3.B.2 (Use Standards for an Attached Accessory Apartment) of the Zoning Ordinance. In general, accessory apartments are permitted as limited uses. *Zoning Ordinance*, §59.3.1.6. Property owners must obtain a conditional use approval for an accessory apartment if they do not have the amount of off-street

parking required for the limited use or if there is another accessory apartment within 300 feet of the block face of the proposed dwelling in which the accessory apartment is to be located. *Zoning Ordinance*, §59.3.3.2.A.2.b. Thus, conditional use applications for attached accessory apartments must meet all standards required for a limited use accessory apartment (except for the required number of on-site parking spaces or the distance between accessory uses) and standards specific to attached accessory apartments. In addition, an Applicant must demonstrate that on-street parking is sufficient to serve the use or, if the deviation is from the minimum distance between apartments, that the use “does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.” *Id.*, §59.3.3.3.A.2.c. Standards pertinent to this approval, and the Hearing Examiner’s finding for each standard, are set forth below.

Section 59.3.3.3.A.2 – Use Standard for all Accessory Apartments

- a. Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:*
 - i. Only one Accessory Apartment is permitted for each lot.*
 - ii. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or*
 - iii. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and*
 - (a) The apartment has the same street address as the principal dwelling;*

Conclusion: Applicants are requesting approval for one accessory apartment. The accessory apartment will be located in the basement and have the same address as the principal dwelling (9605 Rockville Pike, Bethesda). The property does not have a driveway. As a result, the property does not meet the minimum on-site parking requirements for a Class III Accessory Apartment

license. Based on a Referral Notice from DHCA, Applicants filed an application for an attached accessory apartment conditional use on January 22, 2015, seeking approval to deviate from the on-site parking requirements. Exhibits 1 and 34, Attachment A. Applicant will file for a modified license for an accessory apartment upon approval of this conditional use application for an accessory apartment.

(b) One on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided;

Conclusion: As discussed in the previous section, the property does not have a driveway and the Applicants are not proposing to install a driveway. Therefore, the Hearing Examiner finds that the property does not meet the on-site parking requirements. However, as provided in Section 59.A3.3.3.A.2.b, Applicants filed an application for a conditional use seeking approval to deviate from the on-site parking requirements. Exhibit 1.

(c) The maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the principal dwelling, or 1,200 square feet, whichever is less;

Conclusion: According to the property tax record, the existing one-story dwelling has approximately 1,868 square feet of enclosed space with a 400 square feet finished basement. Exhibit 5. Based on the modified floor plan (Exhibit 11 (a)), DHCA Housing Code Inspector, Ivan Eloisa, reported that the accessory apartment (efficiency) will be approximately 460 gross square feet in size. Exhibit 43. Therefore, the gross floor area of the proposed accessory apartment will be less than 50% of the total floor area (1,868 gross square feet) for the principal dwelling and less

than the 1,200 square feet maximum allowed for an accessory apartment use. Having no evidence to the contrary, the Hearing Examiner so finds and concludes that this standard is satisfied.

(d) The maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling; and

Conclusion: The proposed attached accessory apartment will be located in the basement of the principal dwelling. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

(e) The maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory Apartment who are 18 years or older is limited to 2.

Conclusion: Based on Applicants statement in support of the conditional use application, the accessory apartment will be rented for single occupancy. Exhibit 2. Therefore, the Hearing Examiner finds that as a condition of approval, the total number of occupants residing in the accessory apartment who are 18 years or older is limited to one. This condition of approval is set forth in Part V of this Decision.

iv. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Tenant Dwelling or a Guest House.

Conclusion: Staff advises there are currently no other rental residential uses on the property and included this as a condition of approval. Exhibit 34, pp. 2 and 15. Applicants testified that they will comply with the all conditions of approval. T. 14. Therefore, the Hearing Examiner finds that the use as proposed and conditioned will have no other rental Residential uses will be permitted

on the property. This condition of approval is set forth in Part V of this Decision.

- v. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds and concludes that this standard is not applicable to this application.

- vi. Screening under Division 6.5 is not required.*

Conclusion: This exemption of the screening requirements for conditional uses in the Residential Detached Zones is permitted under Section 59.6.5.2.B. The Applicants are not proposing or required to comply with the screening requirements under Division 6.5. Therefore, the Hearing Examiner finds that this standard has been met.

- vii. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

- b. An Accessory Apartment conditional use application may be filed with the Hearing Examiner to deviate from the following limited use standards;*

- i. The number of on-site parking spaces; or*

Conclusion: The property does not have a driveway and therefore does not meet the minimum on-site parking requirements for a Class III Accessory Apartment license. Based on a Referral Notice from DHCA, Applicants filed this conditional use application on January 22, 2015, seeking approval to deviate from the on-site parking requirements. Exhibit 1.

- ii. The minimum distance from any other Attached or Detached Accessory Apartment*

Conclusion: As discussed in the previous answer, the conditional use application was filed under Section 3.3.3.A.2.b.i to deviate from the on-site parking requirements. The minimum distance from other accessory apartments in the R-60 Zone is 300 feet “measured in a line from side lot line to side lot line along the same block face.” Section 3.3.3.B.2.c of the Zoning Ordinance. In this case, there are three existing approved accessory apartments located within 300 feet of the proposed accessory apartment at the following addresses: 4909 Asbury Lane, 9604 Bellevue Drive and 9602 Bellevue Drive. The subject property is one of two properties located mid-block and fronting on the east side of the service road. The existing accessory apartments cannot be measured from side lot to side lot from the subject property because two accessory apartments front Bellevue Drive and one accessory apartment fronts Asbury Lane.

Based on these facts, the Hearing Examiner agrees with Staff and finds that none of the existing approved accessory apartments are located along the same block face as the subject property located on the service road. Therefore, the Hearing Examiner finds that a request to deviate from the minimum distance requirements under this standard is not required for this application.

a. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Accessory Apartment may be permitted by the Hearing Examiner under the limited use standards in Section 3.3.3.A.2.a, Section 7.3.1, Conditional Use, and the following standards:

i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:

(a) The available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and

(b) The proposed Accessory Apartment is likely to

reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

Conclusion: Staff found there is adequate on-street parking in front of Applicants' property to accommodate the main dwelling and accessory use. The subject property has 70 feet at the front property line which Staff reports is sufficient space to park three average size vehicles. Parking on the east side of the service road is unrestricted and the "demand for on-street parking is relatively low" because there is only one other house on the block that fronts on the service road. Staff reported that most of the homes in the neighborhood and within 300 feet of the property have "street frontages of 70 feet or more, allowing adequate space for three average size cars to park on-street in front of each property [and] some of these properties have driveways which reduce the demand for on-street parking." Exhibit 34, p. 16. Based on these facts, Staff found that there is adequate on-street parking in front of the property "to ensure that this accessory apartment will not prevent a resident within 300 feet of the subject property from parking on-street near his or her residence on a regular basis." *Id.* Staff also found that the "addition of one car associated with the proposed accessory apartment is unlikely to reduce the availability of on-street parking within 300 feet of the proposed accessory apartment." *Id., at p. 17.* The Hearing Examiner agrees with Staff.

For these reasons and as previously discussed in Part II E of this Decision, the Hearing Examiner finds that there is adequate on-street parking in front of the property to accommodate the main dwelling and accessory apartment use without adversely affecting or reducing the available on-street parking for residents located within 300 feet of the subject property. Therefore, the Hearing Examiner concludes that this standard has been met.

- ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the*

general neighborhood of the proposed use.

Conclusion: As discussed in the previous section, the conditional use application was filed to deviate from the on-site parking requirements under Section 3.3.3.A.2.b.i. While there are three existing approved accessory apartments located within the 300 feet neighborhood, none are located along the same block face as the subject property which is located on the east side of the service road. As a result, no request to deviate from the distance separation was made or required as part of this application. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

Section 59.3.3.B.2 Attached Accessory Apartment

Where an Attached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

- a. A separate entrance is located:*
 - i. On the side or rear of the dwelling;*
 - ii. At the front of the principal dwelling, if the entrance existed before May 20, 2013; or*
 - iii. At the front of the principal dwelling, if it is a single entrance door for the use of the principal dwelling and the Attached Accessory Apartment;*

Conclusion: A separate entrance to the accessory apartment is located on the south side of the dwelling. The Hearing Examiner finds and concludes that this standard has been met.

- b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of the application for a license or a conditional use.*

Conclusion: According to the property tax records, the one-story detached dwelling was built in 1952. Exhibit 5. Therefore, the Hearing Examiner finds that the one-story detached dwelling in which the accessory apartment will be located is more than 5 years old and concludes this standard has been met.

- c. In the RE-2C, RE-1, and R-200 zones the Attached Accessory Apartment is located at least 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face;*

Conclusion: The property is located in the R-60 (Residential Detached) Zone. Therefore, the Hearing Examiner finds that this standard is not applicable to this application.

- d. In the RNC, R-90, and R-60 zones the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face;*

Conclusion: For the reasons discussed in Section 59.3.3.3.2.b, above, there are three existing approved accessory apartments located within 300 feet of the proposed use on Asbury Lane and Bellevue Drive. However, because the existing accessory apartments front on either Asbury Lane or Bellevue Drive, the Hearing Examiner finds that none of the existing accessory apartments are located along the same block face of the service road where the subject property is located. Therefore, the Hearing Examiner concludes this standard has been met.

C. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-60 Zone, contained in Article 59.4 of the Zoning Ordinance. The proposed accessory apartment is a permitted in the R-60 Zone as a conditional use. In a table included in the Staff Report, Technical Staff compared the minimum development standards in the R-60 Zone to those provided by the application. The following table (shown on the next page of this Decision) demonstrates that the conditional use complies with all development standards for the R-60 Zone. Exhibit 34. p. 8:

Development Standards for the R-60 Zone

Development Standards	Min/Max Required	Proposed
Minimum Lot Area	6,000 sq ft	10,492 sq ft
Minimum Lot width at front building line	60 ft	70 ft
Minimum lot width at front lot line	25 ft	70 ft
Maximum Building coverage	35%	18%
Minimum Setbacks		
- front	25 ft	26 ft
- side	8 ft; 18 ft sum of both sides	8 ft; 23 ft sum of both sides
- rear	20 ft	48 ft
Maximum Building Height	35 ft	15 ft
Maximum Floor area for accessory apartment	946 sq ft	470 sq ft

Based on this evidence, and having no evidence to the contrary, the Hearing Examiner finds that the proposed conditional use application complies with the development standards of the R-60 Zone as provided in Section 59.4.4.9.

D. Applicable General Development Standards (Article 59.6)

Article 59.6 sets the requirements for site access, parking, open space and recreation, landscaping and outdoor lighting, screening, outdoor displays and signs.

Technical Staff reports that with exception of the applicable parking standards, the following standards do not apply to this application as follows (Exhibit 34, p. 9):

The site access requirements under Division [6.1] do not apply to properties in Residential Detached zones. The provision of open space and recreation under Division 6.3, is not required for an accessory apartment use. Landscaping and outdoor lighting under Division 6.4, is not required for a use in a detached house that is not proposing [the installation of landscaping or] a new outdoor lighting fixture. Under § 59.3.3.3.A.2.a.vi, an accessory apartment is exempt from the screening requirements of Division 6.5. The outdoor display and storage requirements under Division 6.6 do not apply

because no materials or merchandise will be displayed or stored outside. The sign requirements under Division 6.7 do not apply because no permanent signage is associated with the application.

Parking standards are governed by Division 6.2 of the Zoning Ordinance. Staff advises that the minimum on-site parking requirements for a residential use under Section 59.6.2.4.B apply to this conditional use application. *Id.* This section requires the provision of two off-street parking spaces for the single-family dwelling and one off-street parking space for the proposed accessory apartment use. The main dwelling was constructed in 1952 without a driveway and the installation of a driveway is not proposed. As provided in Section 59.3.3.3.A.2.b, Applicants filed a conditional use application for an accessory apartment seeking approval to deviate from the off-street parking requirements necessary to obtain a Class III Accessory Apartment license. Exhibits 1 and 34, Attachment A.

For the reasons discussed in Part II E of this Decision, the Hearing Examiner finds that there is adequate on-street parking in front of the property to accommodate main dwelling and accessory apartment use to grant Applicants request to waive the on-site parking requirements under Section 59.3.3.3.A.2.iii.(b) for an accessory apartment use. Based on this evidence, the Hearing Examiner concludes that this standard will be met.

E. Additional Requirements

The County Code mandates that only owners of the property may apply for an accessory apartment license. *Montgomery County Code*, §29-19(b). Here, the Applicants submitted a copy of the property tax record showing joint ownership. Exhibit 5. The Code also requires that accessory apartments meet all requirements of the Housing Code. As demonstrated by Inspector Eloisa's amended report (Exhibit 43), the proposed accessory apartment will meet all housing code requirements provided any repairs or modifications are done within the time prescribed by the

Department of Housing and Community Affairs.

V. DECISION

Based on the foregoing findings and conclusions, and a thorough review of the entire record, the application of Otto Troxler and Gabriela Ferreyra, CU 15-01, for a conditional use to allow an attached accessory apartment located in the basement of an existing single-family dwelling located at 9605 Rockville Pike, Bethesda, under Sections 59.7.3.1 and 59.3.3.3.A & B of the Zoning Ordinance, is hereby **GRANTED**, subject to the following conditions:

1. The Applicants are bound by their testimony, representations and exhibits of record, to the extent that such testimony and evidence is identified in this Report and Decision.
2. The total number of occupants residing in the accessory apartment who are 18 years or older is limited to one (single occupancy).
3. The Applicants must comply with the conditions set forth in the Memorandum of Ivan Eloisa, DHCA Housing Code Inspector, Division of Housing and Code Enforcement, dated May 19, 2015 (Exhibit 43), as follows:
 - (a) Obtain an electrical permit for the basement electric stove installation.
 - (b) Beams, girders, ducts or other obstructions may have a height of not less than 6 feet 4 inches.
 - (c) Install missing handrail for exterior steps leading to the basement unit entrance.
 - (d) Replace double cylinder deadbolt lock with a single cylinder lock that operates with a thumb turn from inside and a key from outside the premises.
 - (e) Install lock on interior door separating the basement dwelling unit from the main dwelling.
4. The Applicants must modify basement to reduce the size of the accessory apartment from a 590 gross square feet one-bedroom as proposed in the original floor plan (Exhibit 11) to a 460 square feet efficiency as shown on the modified floor submitted at the May 15, 2015, hearing and shown in Exhibit 11(a).
5. No other rental Residential uses are permitted to be located on the subject property as the accessory.
6. The Applicants must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits necessary to occupy the conditional use attached accessory apartment as

granted herein. Applicants shall at all times ensure that the conditional use premises comply with all applicable codes (including but not limited to building, life, safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Tammy J. CitaraManis". The signature is fluid and cursive, with the last name being more prominent.

Tammy J. CitaraManis
Hearing Examiner

Issued this 5th day of August, 2015.

Please be advised that any party entitled to notice of the filing of this application or aggrieved party may file a written request to present oral argument before the board of appeals, in writing, within 10 days after the office of zoning and administrative hearings issues the hearing examiner's report and decision. Contact information for the board of appeals is listed below:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

Appendix

SUMMARY OF HEARING

1. Applicants' Case in Chief – Otto Troxler and Dr. Gabriela Ferreyra:

Mr. Troxler and Dr. Ferreyra testified in support of the petition. Mr. Troxler testified and presented Applicants' case in chief. Dr. Ferreyra offered limited testimony during Mr. Troxler's presentation. The following is a summary of their testimony. For ease of reading and consistency, their testimony on cross-examination by individuals present at the hearing is included where appropriate.

Mr. Troxler testified that the accessory apartment will be located in the basement. Dr. Ferreyra works at the National Institute of Health (NIH) and they will probably rent the unit to NIH personnel. Both confirmed that they have read the Technical Staff report and accept the findings and conclusions as their own evidence and agree to comply with the conditions of approval. They will make the necessary changes noted in the housing inspection report. Mr. Troxler asked Mr. Eloisa if DHCA will consider waiving the minimum height requirement of 76 inches for the passage into the bathroom which is 75 ¼ inches in height. T. 10-14.

Applicants agree with Staff's finding on page 12 of the report that parking in front of their house on the service road is adequate as there are only two houses located on the service road and facing Rockville Pike. The block extends from Bellevue Drive to Asbury Lane. Both homes face Rockville Pike and neither have a garage or driveway. Mr. Troxler testified that 99% of the time they do not have any problem parking on the street in front of their house. The home next to them (9603) is a rental unit with two vehicles. He noted there are occasions when the rental unit will have 5-7 vehicles parked in front of their home and along the service road. However, he also noted there are no cars parked on half the block given its length and the fact that there are only two homes on the service road. He testified that they have never had to park their vehicles around the corner due to lack of parking in front of their house. T. 14-16.

Mr. Troxler estimates that 80 to 90% of the homes in the neighborhood have off-street parking because they have a driveway, some with a garage. All of the homes on Asbury Lane have off-street parking. He noted that with the exception of the house located at 9721 Bellevue Drive, he believes most of the homes on Bellevue Drive have at least a driveway while others have both a driveway and a garage. T. 17-19.

Mr. Troxler identified the photographs submitted with the application. Exhibits 13(a)-(e). He testified that the photographs were taken during the week between 10:30 a.m. and 11:00 a.m. sometime in February 2015. Photographs of the posted sign were taken in February and March 2015. Exhibits 19(a) and 30 (a)-(b). He described each photograph and testified that they represent the property, location of the sign, and the view of the service road as it currently exists. T.20-25.

At the request of the Hearing Examiner, Mr. Troxler modified the property survey (Exhibit 8) to show the fence, walkway, entrance to the accessory apartment and the existing lighting on the dwelling and property. He testified that the property is enclosed with a six-foot fence constructed of iron along the front of the property and wood and composite along the side and rear of the property. Mature cypress trees line the front of the property. He confirmed no new landscaping is proposed. T. 26-28.

Mr. Troxler submitted a modified floor plan based on the issues noted in the housing inspection report. Mr. Troxler testified that the existing window (3'x3') cannot be enlarged because of its ground level location adjacent to the stairwell to the accessory apartment entrance (as shown in photograph marked Exhibit 13(d)). The original floor plan was modified to delete the bedroom as part of the accessory apartment. Exhibit 11(a). This will reduce the one-bedroom apartment to an efficiency which Mr. Troxler estimates will be approximately 380 square feet in size. Mr. Eloisa will submit an amended report to reflect the modified floor plan. In response to

questions from Ms. Neustadt, Mr. Troxler identified the path to the accessory apartment and confirmed the basement does not have a walk-out. T. 29-36.

Ms. Berggren asked Mr. Troxler if he would consider installing a driveway since the “traffic is so bad.” He responded that the service road is approximately 230 feet long and provides parking for 19 vehicles. Further, that he said has never seen any of the neighbors park on the service road. Ms. Berggren said she had not seen any neighbor’s park on the service road either. Dr. Ferreyra testified that they do not want to add a driveway for environmental reasons and do not want to remove any of the mature cypress trees along the front of the property. T. 82-86.

In response to follow-up questions from the Hearing Examiner, Mr. Troxler testified that there is 70 feet along their front property line. The service road is 230 feet long with unrestricted parking only on the east side of the road. He estimates there is space to park approximately 19 cars on the service road. They park three vehicles in front of their house. The next door neighbor (rental unit) parks two vehicles in front of their property, and as many as 4 to 5 vehicles two times a week when they have friends over to do yoga after work, as reflected in the photograph submitted by Ms. Neustadt (Exhibit 40). He identified the two vehicles at the end (towards Asbury Lane) belonged to him and were parked in front of his property. He testified that the house located at 9600 Bellevue Drive is also a rental. They considered installing a driveway when they purchased the property eight years ago. However, they chose not to install a driveway because it would have been too close to the house and would have required the removal of some of cypress trees and part of the fence. They want to be able to lock the front gate and continue to provide an enclosed area for their son and dog to use. Dr. Ferreyra added that they do not want to cover the land with more concrete which has a negative impact on the land. Mr. Troxler amended the application to correct the number of off-street parking from 8 to zero. T. 87-92.

Ms. Neustadt asked Mr. Troxler to explain how he can state that no vehicles park on the service road when she has witnessed the opposite. Mr. Troxler testified that he has four cars but only parks three on the street. The adjacent neighbor parks two vehicles on the street. He reported that there are 4 to 5 cars on the street when he takes his son to school at 7:30 a.m. and 4 cars when he returns from work at midnight. He confirmed there can be as many as 10 cars when friends visit and possibly more than 30 when co-workers in police cruisers visit his home. He estimated that there may be 10 to 20 cars when the neighbor has a party which is not on a regular basis. T. 93-96.

Ms. Proestel questioned why Mr. Troxler included the on-street parking from his property line to the corner of Asbury Lane as available for his use when she believes that space should be available for the property owner that pays the property taxes (side yard). Mr. Troxler testified that on-street parking is permitted anywhere because it is a public street. T. 96.

Mr. Troxler requested that the names and signature of James and Maria Turner be removed from the community letter (Exhibit 33(a)). He testified that they contacted him the night before to report that their names were included in the letter without their knowledge and that they had asked Ms. Neustadt or someone else from the neighborhood to remove their names from the community letter (Exhibit 33(a)). The Hearing Examiner advised Mr. Troxler that their names would not be removed because they were not present at the hearing and they had not submitted a written request to remove their names. T. 97. [A signed letter sent via e-mail from James and Maria Turner to Ms. Neustadt requesting the removal of their name from the community letter was received after the hearing on May 15, 2015, and while the record was still open (Exhibit 42)]. Mr. Troxler had no objection to the photograph and documents submitted by Ms. Neustadt (Exhibit 40) and Ms. Proestel (Exhibit 41). All the evidence was admitted into the record. The record was left open to

June 1, 2015. T-98-102.

2. DHCA Housing Code Inspector – Ivan Eloisa :

Mr. Eloisa testified on behalf of DHCA and reviewed the findings of his inspection of the property in a report dated May 5, 2015 (Exhibit 36). He reported that both property owners were present during the inspection which occurred at approximately 10:00 a.m. on April 24, 2015. He testified that at that time, he did not observe any issues with on-street parking in front of the property. He noted there was proper egress to the unit and the basement windows provided the unit with sufficient light and ventilation. The window in the bedroom did not meet the size requirements for an egress window and could not be enlarged because of its location. Therefore, he testified that the room could not be used as a bedroom. He confirmed the passage into the bathroom was 6 feet 1 inch and did not meet the 6 feet 4 inches minimum ceiling height requirement. He noted that Mr. Troxler had done some work to remedy this issue and that there may be a way to work with the area if the door is shallow. T. 37-38.

He testified that the modified floor plan eliminates use of the bedroom as part of the accessory apartment use and converts the unit from a one-bedroom (590 square feet) to an efficiency (460 square feet). As a result, Mr. Eloisa testified that he will amend his May 5, 2015, report to delete issues no. 1 and 4 as they relate to repairs for the bedroom. The remaining issues (2, 3, 5, 6 and 7) will be included in the amended report to be submitted after the hearing. Occupancy in the 460 square foot efficiency will be limited to two people. T. 38-41.

Based on questions from Ms. Neustadt, Mr. Eloisa confirmed that 115 square feet of space is required for the first occupant and 100 square feet for each additional occupant.

Further, he was unaware of any code requirement regarding specific interior circulation for the unit. In response to questions from the Hearing Examiner, Mr. Eloisa clarified that the issues noted in his report must be completed prior to the issuance of an accessory apartment license. Applicants were advised to wait for a decision in this matter before commencing with any repairs. T. 42-45.

3. Marla Neustadt:

Ms. Neustadt testified in opposition to the application. She has lived at 9704 Bellevue Drive for 16 years. This is her first time testifying in opposition to an application for an accessory apartment located in the Locust Hill community. However, she noted that this is the fifteenth time the community has opposed a “multi-tenant” dwelling in the neighborhood. She testified that there are currently 7 out of 41 single-family homes in the neighborhood with this distinction which does not include other homes in the neighborhood with extended families. T. 46.

She submitted a copy of a photograph she had taken a few days prior to the hearing showing a line of parked cars along the service road. Exhibit 40. The photograph was taken from the corner of Bellevue Drive and Rockville Pike looking towards the Beltway at approximately 6:30 to 7:00 p.m. She offered this photograph to dispute the Applicants’ assertion to Technical Staff that other residents generally do not park on the service road. She testified that residents use the service road for overflow parking because of parking issues on Bellevue Drive. She clarified that not all of the homes on Bellevue Drive have a driveway and/or a garage and that there are times traffic is down to one lane because of parked cars along both sides of the street. She reported that several new residents to the neighborhood installed a driveway because parking is a neighborhood issue. She believes Technical Staff’s

acceptance of the Applicants' representation that there is available on-street parking without more "shirks the intention of the law." T. 47-52.

She said that parking is a flashpoint for the residents in the neighborhood and relayed an incident where Mr. Troxler protested when WSSC repair trucks blocked the service road to make necessary repairs (with a permit). She noted that there is an increase in turn-around traffic from Rockville Pike circling the neighborhood due to the mistaken belief that the neighborhood streets provide a short-cut to the Beltway. She testified that they have placed orange cones on the street to signal cars to slow down as a safety measure when the children are playing. With the additional cars on the streets there is an increase in noise which affects the quiet enjoyment of the neighborhood as well as safety issues for pedestrians and bicyclists. T. 52- 53.

Ms. Neustadt pointed out that the parking conditions in the neighborhood is very different in the morning (9:00 a.m. to 11:00 a.m.) then in the afternoon through the evening (after 3:30 p.m.). She described the parking situation based on the occupancy of homes near the proposed use. Applicants' next door neighbor (9603) has many tenants and vehicles and the house on the north side (4906 Asbury Lane) is occupied by a large family with a number of vehicles. At the other end of the service road, the house located at 9600 Bellevue Drive has two vehicles and generates a "high level of auto activity" which she believes may be related to a home business. She clarified that she could not confirm that the occupants were operating a business at this location. She confirmed that both of these properties have a driveway. She questioned why the Applicants did not invest in a driveway given that their front property line is approximately 70 feet long. T. 53-56.

Ms. Neustadt questioned how Technical Staff determined that the number peak-hour

trips into and out of the neighborhood did not exceed 30 when many of the retirees in the neighborhood make multiple trips each day. She also testified that the service road slopes down and is dangerous to drive on during inclement weather. She believes that there will be an increase in cars being side-swiped with the addition of more vehicles parked on the service road. In her opinion, too many cars on the service road “would change the parking habits of those who currently use it.” She confirmed that the proposed use would not change or affect the parking habits of those that live near her on Bellevue Drive as most have a driveway and garage. She noted that she and her neighbors with a driveway stack their vehicles to get as many vehicles off the busy street. T. 57-58.

Ms. Neustadt sought clarification on why Technical Staff found that there were no accessory apartments within 300 feet of the proposed use when there are two on Bellevue Drive and one on Asbury Lane. The Hearing Examiner explained the distance criteria is based on a measurement from the side lot line of the subject property to the side lot line of the existing accessory apartments along the same block face as the service road. Regardless of the distance, Ms. Neustadt expressed her opinion that the addition of another accessory apartment will bring more vehicles, people, noise, and trash. As a result, the neighborhood is changing from single-family dwellings to multi-family dwellings which she believes is unfair to the residents. She questioned how to ensure that the maximum occupancy of the unit is enforced. Mr. Troxler had no questions for Ms. Neustadt. T. 59.61.

4. Edna Proestel:

Ms. Proestel testified in opposition to the application. She has lived at 9606 Bellevue Drive for 52 years. She presented a copy of the application and a copy of a Washington Suburban Sanitary Commission site development plan of the area which she received when she

purchased the home. Exhibit 41. She identified where her home is located and pointed out that the Applicants incorrectly stated there were 8 off-street parking spaces on his property. Ms. Proestel testified that her property (9606) is on the same side as the two existing accessory apartments located at 9602 and 9604 Bellevue Drive. Her property shares a driveway with the property at 9604. She opposed the first accessory apartment application (9604) and was told that future approvals would be more difficult to obtain. However, a few years later the second application was approved even though it was next to the property with an approved accessory apartment. She testified that the house located at 9600 Bellevue Drive is a rental and operates a business. T. 63-67.

Ms. Proestel testified that the owner of the first accessory apartment (9604) moved into the basement apartment and rented the main dwelling to four medical students working at NIH. She described her experience living next to the tenants as “awful.” The tenants had parties and often blocked the shared driveway or backed their vehicles onto her property causing damage to the landscape. She referred to the community letter which identifies the addresses of all the accessory apartments in the neighborhood, and acknowledged some of them are unapproved. Exhibit 33(a). She added that there is an accessory apartment located at 9721 Bellevue Drive. She believes the unapproved or “illegal” accessory apartments exists because the owners fail to accurately report that the kitchen in the basement will be used for cooking. As a result, the owners are told they do not have to apply for an accessory apartment approval. [Mr. Eloisa advised Ms. Proestel that DHCA will investigate all complaints for an unlicensed accessory apartment if a complaint is filed for a specific address.] In addition to the unapproved accessory apartments, she reported that businesses operating out of homes in the neighborhood include a construction company and car repair. T. 67-74.

In her opinion, there is an excessive concentration of accessory apartments in the neighborhood which she described as “hemmed in” between the beltway and Rockville Pike. She also expressed that the neighborhood does not need more traffic or noise and should remain single-family dwellings. Mr. Troxler did not have any questions for Ms. Proestel. T. 75-76.

5. Linda Yangas:

Ms. Yangas testified in opposition to the application. She resides at 9717 Bellevue Drive which is across the street from Ms. Proestel. She testified that she signed the community letter in opposition to the application (Exhibit 33(a)), most of which she read into the record as her testimony. In her opinion, the approval of the accessory apartment application will change the peacefulness of the neighborhood. Mr. Troxler did not have any questions for Ms. Yangas. T. 77-82.

6. Deborah Berggren:

Ms. Berggren testified in opposition to the application. She resides at 9619 Bellevue Drive. Ms. Berggren did not provide a statement or testimony other than to ask Mr. Troxler if he would consider installing a driveway because the traffic was so bad. His response is summarized as part of the Applicants case-in-chief. T. 84-86.